

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MAURICE EUGENE PHILLIPS,

Defendant-Appellee.

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UNPUBLISHED

May 21, 1999

No. 212089

Wayne Circuit Court

Criminal Division

LC No. 98-003066

Before: Griffin, P.J., and Cavanagh and Fitzgerald, JJ.

PER CURIAM.

Plaintiff appeals by delayed leave granted the trial court's order granting defendant's motion to quash in part and reducing the charge. We reverse in part and remand.

Defendant was charged with first-degree premeditated murder, MCL 750.316; MSA 28.548, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). At the preliminary examination Latricia Lewis testified that she was visiting with a friend, Joe Tate, when defendant came to her house. When she and defendant began arguing, Tate interceded and confronted defendant verbally. Lewis ran from the house to summon help. As she was running, she heard three gunshots. When she returned to the house, she discovered that the furniture had been disturbed and Tate had been shot. A trail of blood ran from Tate's location to defendant's location. Defendant reported that Tate came at him. Lewis indicated that she saw neither defendant nor Tate with a gun on the night of the shooting.

The district court bound defendant over as charged. The trial court granted defendant's motion to quash in part and reduced the charge to voluntary manslaughter, MCL 750.321; MSA 28.553. The trial court found that while the evidence did not support a charge of first-degree murder, it supported a charge of voluntary manslaughter.

We review a trial court's decision to grant or deny a motion to quash de novo to determine if the district court abused its discretion in ordering a bindover. *People v Orzame*, 224 Mich App 551, 557; 570 NW2d 118 (1997).

Voluntary manslaughter is an intentional killing committed under the influence of passion or hot blood produced by adequate provocation, and occurring before a reasonable time has passed for the blood to cool. The intent to kill or commit serious bodily harm is an essential element of voluntary manslaughter. *People v Hess*, 214 Mich App 33, 38; 543 NW2d 332 (1995).

While conceding that the district court abused its discretion by binding defendant over on a charge of first-degree murder, plaintiff argues that the trial court erred by granting the motion to quash in part and reducing the charge to voluntary manslaughter. We agree, and reverse the trial court's decision in part and remand for further proceedings. Adequate provocation is provocation which causes a person to act out of passion rather than reason. It must be such that it would cause a reasonable person to lose control. *People v Pouncey*, 437 Mich 382, 389; 471 NW2d 346 (1991). No other adult person was in Lewis's house when the shots were fired; thus, it can be inferred that defendant shot Tate. Lewis's testimony that she observed that the furniture had been disturbed, and defendant's reported statement that Tate "came at" him constitutes the only evidence of what transpired in the house between the time Lewis left and the time she returned to find Tate shot. To infer from this evidence that Tate took some action that constituted adequate provocation such that defendant lost control is to engage in impermissible speculation and the piling of inference upon inference. *People v Atley*, 392 Mich 298, 314-315; 220 NW2d 465 (1974). With no direct or circumstantial evidence of adequate provocation from Tate other than words, the evidence did not support a charge of voluntary manslaughter. *Pouncey, supra*, at 390.

The evidence supported a charge of second-degree murder, MCL 750.317; MSA 28.549. The elements of second-degree murder are: (1) a death, (2) caused by the defendant, (3) absent circumstances of justification, excuse, or mitigation, (4) done with the intent to kill, the intent to inflict great bodily harm, or the intent to create a very high risk of death with the knowledge that the act probably will cause death or great bodily harm. *People v Bailey*, 451 Mich 657, 669; 549 NW2d 325 (1996). The evidence that Tate was shot five times and that at least one bullet was fired at close range supported a finding that defendant intended to kill Tate.

The trial court's order granting the motion to quash is reversed in part, and this case is remanded for trial on a charge of second-degree murder. The stay previously imposed is lifted. We do not retain jurisdiction.

/s/ Richard Allen Griffin

/s/ Mark J. Cavanagh

/s/ E. Thomas Fitzgerald